STATEMENT OF ALBERT FISS

TESTIMONY BEFORE THE SUBCOMMTTEE ON OVERSIGHT & INVESTIGATION

OCTOBER 18, 2005

INTRODUCTION

First let me say, I find it unfortunate that the subcommittee is investigating injury insurance issues related only to "Thoroughbred Horse Racing Jockeys..." to the exclusion of quarterhorse jockeys' and the exercise riders that serve this community. I am concerned that members of this committee are being misinformed about both the long and short-term history of on-track accident insurance coverage in the horse racing industry. I am concerned about the published reports that the Chairman of this Committee has said that the Jockeys' Guild and its members are responsible for on-track accident insurance coverage. Such statements appear to prejudge the very issues this committee is investigating.

I am also concerned about characterizations made by staff members of the subcommittee to the press, which demonstrates not only prejudgment of the issues under investigation but also a predisposition to attack the work Dr. Gertmenian and I have done for the past four years. Let me remind the members of the committee that in 1965 members of the players association for Major League Baseball elected Marvin Miller to run their organization, despite the tremendous opposition by the owners, and continued with their support of Mr. Miller, in spite of the almost daily negative reporting in the press. Baseball owners then, as do racetrack owners now, portray their relationship with the human athlete as paternalistic. The first sign of independence, however, is met with brute force in an attempt to discourage such behavior. Any prejudgment of the issues by this Committee, in my view, could be seen to represent an affirmation of that paternalistic authority.

In 1978, the United States Congress passed the Interstate Horse Wagering Act and in so doing handed to racetracks and horsemen the keys to the kingdom. Perhaps the members of Congress did not realize that jockeys' are not considered horsemen, or they did not feel that a jockeys' contribution to the sport of kings was worthy of partial ownership of the game. Or perhaps, due to the fact that horse racing (as a gambling industry) is regulated under state authority, Congress did not feel it appropriate to scrutinize how the industry was run. Whatever the case may have been, this single act created what I consider to be one of the last company-owned towns in America. Over the years, Congress has passed other legislation such as The Wire Act, an amendment to the original Interstate Horse Wagering Act, and repeal of the 40% tariff on foreign wagering - all of which have benefited racetracks and their partners, but has done nothing to improve the health and safety conditions for jockeys, exercise riders or other participants in the sport. In April of this year, solely to benefit the track owners, Congress amended federal law restricting H-2B visas, despite the Department of Housing and Urban Development's (HUD) investigation into unfair housing practices and other human rights violations occurring at Arlington Race Course, a Churchill Downs property.

HISTORY OF THE GUILD

The Jockeys' Guild was started in 1940, the result of a jockey getting injured at a racetrack, not having enough money to pay his hospital bills, and receiving no support from the racing association or the local horsemen's benevolent protection association (HBPA). Among the founders of the organization, Johnny Longden, Tommy Luther, Eddie Arcaro, and Sam Renick were all legends of the game. Today, the members of the Jockeys' Guild can proudly state that they belong to the oldest continually existing professional sports labor organization in the country. Since its inception, however, the Guild has obtained few benefits financially or otherwise on behalf of its members relative to other "player associations". A few of the major benefits all jockeys' receive, through the efforts of the Guild, are an ambulance following them during the running of every race, establishment of an account with the horsemen's bookkeeper (which guarantees payment for services rendered), and a quasi-national collective bargaining agreement (with TRA member tracks) for the use of jockeys' media rights.

One of the reasons for the lack of progress has to do with the nature of the game itself. Unlike baseball, basketball, football or hockey, where there are only two stakeholders in the game (owners and players), horse racing has five and arguably six stakeholders – jockeys, racetracks, trainers, horse owners, state racing commissions, and breeders. This single major difference in our sport has created an industry that is non-responsive to technological change, fearful of new ideas, and has resulted in the evolution of an industry, that was once the largest spectator sport and gambling venue in the nation, into an industry overtaken by nouveau riche made-for-television events.

For jockeys, the battle is particularly difficult. Jockeys campaign against one another for mounts on a daily basis, with no guarantee of keeping a mount (win or lose) from race to race. The sociological consequence of this reality is that jockeys cannot protest so strongly as to jeopardize their business. As an example, one former president of the Guild, whom I believe will be testifying in front of this committee, told me that after a time he was unwilling to stick his neck out for the other members because it was affecting his business.

THE PRIOR GUILD MANAGEMENT

Under the old management of the Guild, members enjoyed the benefits of a family health insurance plan, which included protection/coverage for on-track injuries. The policy, underwritten by Union Labor Life (ULLICO), provided jockeys (riding in non-workers compensation states) with medical claims coverage above the $100,000 of protection racetracks purchased through the Thoroughbred Racing Association (TRA) / Jockeys' Guild Media Rights Agreement. The collapse of the ULLICO policy began in August 2000 when a jockey riding in Arizona was catastrophically injured in a race and whose medical bills (within the first six months after the accident) exceeded $750,000. This single event represents the downfall of the old management and is the basis for all of the misinformation which has followed about the Guild and its responsibility for covering jockeys injured on the racetrack. (See Exhibit A for a timeline of events)

Pat Day, the president of the Jockeys' Guild at the time, in response to a question about the cancellation of jockey health insurance, said to a reporter from Bloodhorse Magazine, "This was not a decision we made hurriedly. We really struggled with it, ... But it was the only decision we could make in order for the organization to stay solvent and continue representing the riders."

As a short-term remedy for the loss of family health insurance & supplemental on-track accident coverage (the ULLICO plan), the former Guild management under John Giovanni solicited the assistance of the insurance broker for the Thoroughbred Racing Association (TRA), Mr. Robert Connelly. At the time, Mr. Connelly's firm, Mather & Co., was providing on-track accident insurance coverage for approximately seventy-five percent (75%) of all non-workers compensation racetracks in the country. The remaining tracks were covered by a policy purchased through ASCS/Mac Donald or did not carry insurance at all.

Economies of scale in the insurance business is very important, and given the limited number of tracks covered by ASCS/Mac Donald, Mather & Co. was able to secure more and more tracks as ASCS/Mac Donald declined to renew coverage.

In March of 2001, the TRA contract represented one of Mr. Connelly's biggest accounts. In order to protect his business, Mr. Connelly offered the former Guild management an insurance policy to cover jockeys for up to one million dollars, with a one hundred thousand dollar deductible. The insurance policy, in effect, provided a guarantee against lawsuits for racetracks. A win-win for the tracks and Bob Connelly. But a lose-lose for the jockeys' and the Guild.

CURRENT MANAGEMENT

The current management of the Guild is being blamed for the lapse of coverage and consequently the financial strait Gary Birzer and his family and other thoroughbred and quarterhorse jockeys are in. However, a closer examination of the facts reveals the necessity of the decision made in December 2001.

The purchase of the policy in April 2001, by the former Guild management, initially cost the Guild $443,284 and covered 457 jockeys. The population of jockeys covered under the policy was restricted to Guild members who paid $3.00 per mount in dues, and was further restricted to members riding in thirty-one of the thirty-eight pari-mutual states. In other words, jockeys who regularly rode in New York or California, lets say, likely would not have been covered by the policy if they got seriously injured riding a mount in Kentucky.

The policy was subject to an audit at the end of the term. However, because there were no claims filed against the policy and the policy was not renewed and an audit was never performed.

But consider for a moment if the Guild had repurchased the policy in question. A one-year renewal of the policy would have cost the Guild approximately $510,000 (based on a zero claims scenario of the previous twelve months and an increase in membership of approximately one hundred). In the period from April 2002 to April 2003, the policy would have paid the excess claim on one jockey injury in Louisiana (at Evangeline Downs) and would have cost the insurance company approximately $21,000.

The first significant jockey injury occurred in August 2003 (the hypothetical third year of the policy) at Ellis Park in Henderson, KY, in Chairman Whitfield's congressional district. During the succeeding twenty-six months, there have been eleven catastrophic jockey injuries (nationally), two resulting in death, with the most recent occurring at Charles Town Racetrack on July 9, 2005.

Although I am no actuary or underwriter, the result of these injuries, and the boost in Guild membership, would have to have increased the cost of the policy to the neighborhood of $3,000,000 per year. By now this committee should be aware of the low rate of pay most jockeys work for and the relatively low level of income the Jockeys' Guild receives from the industry on behalf of its members.

EXHIBIT A

August 2000 – Stacy Burton is injured at Prescott Downs, Arizona. Her injuries cost her the use of her legs. Total cost of hospital and doctor claims exceed $750,000 in the first six months.

December 2000 – At the annual assembly, John Giovanni asks the executive committee of the Board of Directors to vote on whether or not to continue to purchase the ULLICO plan after the underwriters of the health insurance plan request a twenty-five percent (25%) increase in the premium. The executive committee votes to continue purchasing the plan.

March 2001 – John Giovanni calls an emergency meeting of the executive committee in Florida. He tells the executive committee that the underwriters of the ULLICO health insurance plan are asking for a forty-three percent (43%) increase in the insurance premium, effectively increasing the estimated premium from $2.8 million to $4.3 million. The executive committee votes to terminate the plan (except for those riders eligible under the California and Delaware subsidy, and certain family members of permanently disabled jockeys. NOTE: The increase from $2.8 to $4.3 million does not equate to a forty-three percent increase, however, these were the numbers and percentages reported by Mr. Giovanni to the executive committee.

April 2001 – John Giovanni terminates the ULLICO health insurance plan, with the exception of those mentioned above. Simultaneously, John Giovanni purchases a one-year catastrophic accident insurance policy to protect jockeys regularly riding in non-workers compensation states. In other words, jockeys riding most of their mounts in New York, California, New Jersey, and Maryland are not covered when riding in a non-workers compensation state. The broker for the insurance policy is Bob Connelly, the broker for the TRA. The cost of the policy was $443,284, and covered 457 jockeys. From April 01, 2001 through April 01, 2002 no claims were filed against the policy.

June 2001 – A new management team is put in place to try and turn around the Guild. The first priority was to secure family health insurance for Guild members and their families. The second priority was to stop the Guild from losing more money. It was explained to the new management that the Guild had in excess of $18 million fifteen years prior. At the time of the takeover, the Guild had $2.5 million in cash plus $1.3 million in the Disabled Jockeys' Fund.

December 2001 – Austin, TX - The first annual assembly under the new management of the Guild. The new management of the Guild successfully acquires a new family health insurance plan for its members. It is discussed, at the time, that the Guild cannot afford both family health insurance and supplemental on-track coverage. A general philosophy is adopted that jockeys should not be required to pay for on-track injures and related medical expenses. It is also generally agreed upon that the Guild will not re-purchase the catastrophic policy purchased in April.

At this time, all Guild members received a new family health insurance enrollment package. Contained within the package was a statement that the new family insurance did not cover on-track injuries and that the Guild could no longer afford the additional $1,000,000 in coverage.

NOTE: It was also discussed, at the meeting, that in order for the Guild to have teeth going into the next round of negotiations with the TRA, it would be necessary to increase membership to approximately twelve hundred.

March 2002 – While the decision to not re-purchase the catastrophic insurance (nationally) had already been made, Robert Colton advises that given the excess funds in Delaware from the video lottery terminal, perhaps a policy should be purchased for Delaware riders only. In the end, Mr. Colton decides against the purchase, stating that the Guild needs to be uniform in its decision that on-track coverage is the racetracks responsibility.

August 2003 – The first significant accident involving a jockey whose total medical bills far exceed the racetracks $100,000 policy is recorded. Over the course of the next twenty-six months eleven (11) additional riders are injured catastrophically.